

Early Implementation Program (EIP) Draft Guidelines - Response to Comments Summary Table
January 2011

Agency /Affiliation:	Private Citizen	Address: P.O. Box 31377 Los Angeles, Ca 90031	By: Email	Date: 4/26/2010
Sent By: Joyce Dillard		E-mail: dillardjoyce@yahoo.com		

Comment Number	Agency / Affiliation	Comment		Response
1	Private Citizen	Will there be a requirement to circulate and publish any Floodplain Management Plans or other related plans to the public?	No Change to the Guidelines	Does not apply to these Guidelines.
2	Private Citizen	In the City of Los Angeles, the Floodplain Management Plan was not published in a newspaper of general circulation nor was public comment solicited outside of a city chartered agency known as the Neighborhood Councils.	No Change to the Guidelines	Does not apply to these Guidelines.
3	Private Citizen	How are Methane Mitigation Plans Best Management Practices being implemented in the consideration of flooding? Will there be standards set by the National Fire Protection Association for methane mitigation or oil fields? Will discharge be monitored?	No Change to the Guidelines	Does not apply to these Guidelines.
4	Private Citizen	How is landfill mitigation being addressed in relationship to flood issues? Will there be requirements to monitor all landfills, old and current?	No Change to the Guidelines	Does not apply to these Guidelines.
5	Private Citizen	Will groundwater basins and sub-basins be included in flood management?	No Change to the Guidelines	Does not apply to these Guidelines.
6	Private Citizen	How are sewer leakages being addressed and monitored as it applies to flood issues?	No Change to the Guidelines	Does not apply to these Guidelines.

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Agency /Affiliation:	California Central Valley Flood Control Association, SAFCA, SJAFCA, SBFCA, TRLIA, WSAFCA	Address: 621 Capitol Mall, 18th floor, Sacramento 95814	By: Email	Date: 4/26/2010
Sent By: Scott Shapiro		E-mail: sshapiro@downeybrand.com		

Comment Number	Agency / Affiliation	Comment	Decision	Response
1	California Central Valley Flood Control Association, SAFCA, SJAFCA, SBFCA, TRLIA, WSAFCA	Suggestion to Modify Guidelines to Provide for Real Estate Project There are many areas of the Projects where inadequate real estate was acquired by the State for the Projects. We suggest that DWR revise the Guidelines to allow for local agencies to propose real estate acquisition projects to address these shortcomings, as a 100% State cost share (since it was the State's obligation in the first place).	No Change to the Guidelines	The State will cover a 100% cost share where the existing right of way does not meet the right of way requirements established at the time of the original project construction intent. The Guidelines already indicate that the State may fund up to 100% of the cost of acquiring real estate that it is already a State responsibility to have acquired in Section IV.I.C.3(i) of the Guidelines.
2	California Central Valley Flood Control Association, SAFCA, SJAFCA, SBFCA, TRLIA, WSAFCA	Suggestion to Modify Guidelines to Provide for New Small Capital Project It is recommended that DWR amend the Guidelines to allow for a Small Capital Improvement Project exemption for which previous completion of an Area Plan would not be required, with a possible cap at \$5 million.	Change Guidelines	The applicant doesn't need to provide an Area Plan if the project itself is cost justified, under \$5 million and demonstrated to be consistent with any Area Plan likely to be developed. In response to this comment the Department has added language to Section IV.E.3 of the Guidelines.
3	California Central Valley Flood Control Association, SAFCA, SJAFCA, SBFCA, TRLIA, WSAFCA	Need to Clarify the Use of the Term "Repair" Add a statement to the Guidelines clarifying the use of the term "repair" vs. "improvement because "repair" projects cannot receive credit from the Corps because "repair" falls under O&M.	Change Guidelines	The term "repair" should not be construed as limited to O&M. In fact, routine O&M is not fundable under EIP. The Department has amended the definition of the term "Repair Project" to clarify what will be considered a repair for EIP purposes. See Section II of the Guidelines.
4	California	Impoverished Areas: The Guidelines should specifically reference AB 1788 which unanimously passed the	No Change	We should not reference bills that have not yet been made into law.

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	Central Valley Flood Control Association, SAFCA, SJAFCFA, SBFCA, TRLIA, WSAFCA	Assembly Committee on Water, Parks and Wildlife and was referred on consent to the Appropriations Committee (scheduled for hearing on 4/14/10). This bill would change the criteria for supplemental cost share for Impoverished Areas.	to the Guidelines	
5	California Central Valley Flood Control Association, SAFCA, SJAFCFA, SBFCA, TRLIA, WSAFCA	Relationship to Non-Project Levees. It is clear that the Guidelines apply to improvements to Project levees. However, it is not clear whether the Guidelines apply to improvements to non-Project levees where those levees protection an area that is also protected by Project levees and the Project levees are not effective without the protection of the non-Project levees (where both types of levees would be part of the area plan). This is especially true for Delta levees which are specifically mentioned in the relevant sections of Proposition 1E, upon which the Guidelines are based. Inclusion in those sections means that these levees should be included, even if non-project. This issue should be clarified such that the Guidelines are expressly applicable to non-Project levees where those non-project levees are delta levees or protect areas in common with Project levees.	Change Guidelines	All levee repairs and improvements within the primary zone of the Delta may be funded through the Delta Levees Program. Repairs and improvements for non-project levees in the secondary zone of the Delta may be funded through the Delta Levees Program. Repairs of project levees in the primary zone may be funded through either EIP or the Delta Levees Program. Likewise, improvements to urban non-project levees in the secondary zone may be funded through the Delta Levees Program or through EIP if the levee is in the State Plan of Flood Control, or is likely to be added to the State Plan of Flood Control. Local agencies are free to choose either program for funding their projects. In the secondary zone, EIP may fund repairs to project levees and improvements to urban project levees. In response to this comment the Department has added Section IV.E.2 of the Guidelines.
6	California Central Valley Flood Control Association, SAFCA, SJAFCFA, SBFCA, TRLIA, WSAFCA	Improving Cash Flow Issues Certain aspects of the advance funding requirements still require significant financial resources on the part of the Applicant beyond those of the Applicant's cost share. We suggest several changes to the program to allow Applicants to more efficiently fund their projects.	No Change to the Guidelines	Advanced payments already provide for sufficient cash flow for projects. Related to comment 49.

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7	California Central Valley Flood Control Association, SAFCA, SJAFCA, SBFCA, TRLIA, WSAFCA	Suggestion to Clarify Requirements for Area Plan. Some hydrologic basins in the Valley contain both urban and non-urban areas which could potentially be classified under different levels of flood protection (200 year for urban areas and lower for non-urban area). This should be defined as acceptable in the Guidelines and there should be a cost-benefit analysis for the project based upon the relevant level of protection.	Change Guidelines	The Area Plan should clearly demonstrate the level or levels of protection throughout the basin. In response to this comment the Department has added footnote 4 in Section IV.F of the Guidelines.
8	California Central Valley Flood Control Association, SAFCA, SJAFCA, SBFCA, TRLIA, WSAFCA	Consideration of Geographical Diversity. DWR should take appropriate actions to ensure geographical diversity in the awarding of funds.	No Change to the Guidelines	This is not based upon geographic diversity, but based on need, benefits, and readiness.
9	California Central Valley Flood Control Association, SAFCA, SJAFCA, SBFCA, TRLIA, WSAFCA	In the “definitions” section, the term credit should be defined in the context of State and local funding: “Credit” – Amounts provided by the State toward what would otherwise be the local share of eligible project costs to cover for the State’s share of eligible project costs incurred prior to the execution of a funding agreement.	Change Guidelines	In response to this comment the Department has added a definition of the term “Credit” in Section II of the Guidelines.
10	California Central Valley Flood Control Association, SAFCA, SJAFCA, SBFCA, TRLIA,	The definition of “repair project” should be revised as follows: “Repair Project” - ... (a). A Project only qualifies as a repair if it restores the design level of the flood management facility to a capacity lower than or equal to the 1955/1957 design level of performance or subsequent federal authorization. originally intended	Change Guidelines	In response to this comment the Department has changed the definition of the term “Repair Project” in Section II of the Guidelines.

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	WSAFCA	rating- If a Project results in the facility having a higher design level of performance than originally intended , it is an improvement, not a repair. A Local Agency may, for its own purposes, consider work on past improvements for which the State has not offered assurances to the federal government to be a repair. For the purposes of complying with the requirements of Proposition 1E; however, the Department will not consider work beyond what is needed to meet the State's assurances to the federal government for a repair.		
11	California Central Valley Flood Control Association, SAFCA, SJAFC, SBFCA, TRLIA, WSAFCA	Where the facilities to be repaired are the obligation of the State (as noted in the Water Code and the Guidelines), the State should pay 100% of the repair cost, with the Applicant paying only the incremental cost of any improvement, in contrast to the Guidelines which appear to require the Applicant to cost share in all of the work, even though the State is responsible for the repair.	No Change to the Guidelines	The Guidelines are consistent with decades of past practice where, for repair projects the State pays 100% of the nonfederal cost on Water Code 8361 levees; for improvement projects, all nonfederal costs are fully cost shared without sorting of repair and improvement costs- which involves numerous hypotheticals that are subjective and open to debate.
12	California Central Valley Flood Control Association, SAFCA, SJAFC, SBFCA, TRLIA, WSAFCA	Design projects – Page 13 The proposed Guidelines add a sentence which reads as follows: “Design Project Applicants must be able to demonstrate that they will have funds necessary to construct their design.” This is not reasonable because applicants cannot reasonably estimate the cost of a project until the design is significantly completed. In addition, applicants may need to raise funds to construct the project.	No Change to the Guidelines	An estimate must be provided during design phase with the understanding that it is a ballpark estimate until the design is completed. The applicant must demonstrate a method to raise funds for the matching share. Related to 13.
13	California Central Valley Flood Control Association,	The requirement of an Area Plan and Economic Analysis should be eliminated for design applications, consistent with the discussion above regarding small capital projects.	No Change to the Guidelines	An estimate must be provided during design phase with the understanding that it is a ballpark estimate until the design is completed. Related to 12.

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14	California Central Valley Flood Control Association, SAFCA, SJAFCFA, SBFCA, TRLIA, WSAFCA	Eligible Costs - Page 18 Added to the current list of eligible costs should be: h) Cost of complying with the funding agreement requirements.	No Change to the Guidelines	All project costs directly contributing to design and construction are already covered to a large extent in existing Guidelines.
15	California Central Valley Flood Control Association, SAFCA, SJAFCFA, SBFCA, TRLIA, WSAFCA	Required Application Materials – Page 20 DWR should consider phasing the submission of some of the more complex and costly deliverables in support of the EIP application. For example, a complete Financial Plan should not be a requirement until a conditional funding commitment is made by the State, as development of the Financial Plan is a significant expense to be making when it is not clear whether the project will be accepted. An abbreviated financial plan demonstrating capability could be submitted upfront; then a detailed supplement could later be provided with a work plan.	Change Guidelines	A Preliminary Financial Plan is acceptable at the application stage provided that at the time of signing of the Funding Agreement, the funding is firm. The Guidelines are now revised to specify which components of the Financial Plan can be omitted from the Preliminary Financial Plan in Section IV.I.1.c. of the Guidelines. Related to comments 17, 20, 33, 34, and 35.
16	California Central Valley Flood Control Association, SAFCA, SJAFCFA, SBFCA, TRLIA, WSAFCA	The Guidelines require a certification from an engineer that the information in the application has been reviewed and that the project will provide a certain level of flood protection. However, as phrased it appears the engineer is being asked to certify that level of protection before the project is even constructed. The following edit is suggested: 2. Required Application Materials The application will include:	Change Guidelines	The registered professional civil engineer must certify the estimates or the existing level of protection and the level of protection upon the completion of the Area Plan. In response to this comment the Department has added language to Section IV.H.2 of the Guidelines.

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		... > A statement by a registered professional civil engineer which (i) certifies that he has reviewed the information presented in support of the application and (ii) provides an estimate of the Level of Protection to be provided upon completion of the Area Plan (e.g., 100/200-year)		
17	California Central Valley Flood Control Association, SAFCA, SJAFCFA, SBFCA, TRLIA, WSAFCA	Required Application Materials p. 20 This application will include: ... > A preliminary Financial Plan;	Change Guidelines	A Preliminary Financial Plan is acceptable at the application stage provided that at the time of signing of the Funding Agreement, the funding is firm. The Guidelines are now revised to specify which components of the Financial Plan can be omitted from the Preliminary Financial Plan in Section IV.I.1.c. of the Guidelines. Related to comments 15, 20, 33, 34, and 35.
18	California Central Valley Flood Control Association, SAFCA, SJAFCFA, SBFCA, TRLIA, WSAFCA	Required Application Materials p. 20 This application will include: ... > A flood risk resolution approved by the Applicant which contains an estimate of the current flood risk, in a form approved by the Department.	Change Guidelines	In response to this comment the Department has added language to Section IV.H.2 of the Guidelines.
19	California Central Valley Flood Control Association, SAFCA, SJAFCFA, SBFCA, TRLIA, WSAFCA	Required Application Materials p. 20 This application will include: ... > A statement of loans from other sources or bonds that are associated with the Project financing plan and a statement of repayment method and loan security for such other financing sources, if available ;	No Change to the Guidelines	The financial statements are necessary.

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20	California Central Valley Flood Control Association, SAFCA, SJAFCA, SBFCA, TRLIA, WSAFCA	Finding 4 – Page 25 The following edits are recommended: The Applicant must demonstrate through a financial plan that the Local Agency responsible for carrying out operations and maintenance for the Project and any other facilities of the State Plan of Flood Control for which the Local Agency is responsible has will have adequate funding for these responsibilities and has is pursuing any additional committed the necessary funds to operate and maintain the proposed flood risk reduction features.	No Change to the Guidelines	It is ok to be pursuing the money during the application process, but the applicant must demonstrate that they have the funds before the Department signs the Funding Agreement. Related to 15, 17, 33, 34, 35.
21	California Central Valley Flood Control Association, SAFCA, SJAFCA, SBFCA, TRLIA, WSAFCA	Finding 4 p. 25 The following addition is recommended: The Applicant must demonstrate through a financial plan that the Local Agency responsible for carrying out operations and maintenance for the Project and any other facilities of the State Plan of Flood Control for which the Local Agency is responsible has adequate funding for these responsibilities and has committed the necessary funds to operate and maintain the proposed flood risk reduction features.	Change Guidelines	In response to this comment the Department has added language to Section IV.I.1.(b) of the Guidelines.
22	California Central Valley Flood Control Association, SAFCA, SJAFCA, SBFCA, TRLIA, WSAFCA	Finding 5 p. 25 To the extent a city, county or other public agency is “affected” by the Project (that is, it is benefited by or and has a financial role in or legal connection to the operations and maintenance responsibilities connected to the Project) the agency must demonstrate a sound financial plan to cover its share of the operations and maintenance costs.	Change Guidelines	In response to this comment the Department has added language to Section IV.I.1.(b) of the Guidelines.
23	California Central Valley Flood Control Association,	Finding 5 p. 25 To the extent a city, county or other public agency is “affected” by the Project (that is, it is benefited by or has a financial role in the operations and maintenance	Change Guidelines	In response to this comment the Department has added language to Section IV.I.1.(b) of the Guidelines.

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	SAFCA, SJAFCA, SBFCA, TRLIA, WSAFCA	responsibilities connected to the Project) the agency must present demonstrate a sound financial plan which demonstrated that at the time the Project is complete it will be able to cover its share of the operations and maintenance costs.		
24	California Central Valley Flood Control Association, SAFCA, SJAFCA, SBFCA, TRLIA, WSAFCA	Criteria 1 (timing of construction approval letter) – Page 27 The guidelines state at the end of Criteria 1: “... In addition, Applicants must have received a Central Valley Flood Protection Board permit for any proposed work requiring such a permit.” This requirement may not always make sense in the context of real estate acquisition. Once the project has completed NEPA and CEQA, it may be appropriate for the State to begin to fund real estate acquisition in light of the long-lead time for these activities. However, for other reasons (such as crowded agendas or delays in Corps processing) the Central Valley Flood Protection Board may not be ready to issue a permit. For these reasons these two requirements should be de-coupled.	No Change to the Guidelines	The Central Valley Flood Protection Board doesn’t need to issue a permit for buying and selling property. Real estate acquisitions may be funded by the State after completion of CEQA/NEPA. A Central Valley Flood Protection Board permit may be obtained for any necessary work requiring said permit after acquisition.
25	California Central Valley Flood Control Association, SAFCA, SJAFCA, SBFCA, TRLIA, WSAFCA	Criterion 6 – Most Cost-Effective Alternative (Page32) The State should consider adding language to allow the State some flexibility to consider only one alternative in areas where it is not reasonable to consider multiple alternatives. For these cases, the State should allow an Applicant to provide a qualitative discussion as to why alternative alignments were not considered; otherwise, the Applicant will simply incur additional costs in preparing the application with no corresponding benefit to the applicant, the State, or the public. Some suggested language is provided below: Criterion 6 - Most Cost-Effective Alternative: ...	No Change to the Guidelines	This flexibility already exists. The Guidelines already allow for the applicant to avoid detailed analysis of infeasible alternatives. The applicant is encouraged to consult the Department in advance of any analysis.

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		<p>The Applicant should include a benefit-cost review for each feasible alternative that takes into account all flood risk reduction benefits as well as other benefits of the Project. For ecosystem restoration benefits, a cost-effectiveness analysis can be used to demonstrate differences among plans for this element which is not included in the benefit/cost analysis.</p> <p>The State may determine that alternatives are not practicable due to existing adjacent land uses or other issues. In situations where an alternative is not practicable, the Department will allow a Local Agency to submit an economic analysis that does not analyze multiple alternatives in the determination of the most cost effective economically feasible alternative. In this case the Local Agency will instead be required to submit supporting documentation to the State that is sufficient for the State to make a determination that alternatives are not practicable.</p>		
26	California Central Valley Flood Control Association, SAFCA, SJAFC, SBFCA, TRLIA, WSAFCA	<p>Financial Plan to Support Area Plan – Pages 35 and 36</p> <p>At the level of the Area Plan, there should not be the need to prepare such a detailed financial plan. The financial plan should be a more high level analysis including a strategy coupled with a commitment to move forward with the plan by the governing agency</p> <p>To implement this comment, we request that the Guidelines be revised by deleting the first two full paragraphs on page 36 (after the bullets). In addition, in regard to the next full paragraph (regarding the ability to provide funding for O & M), please see comments above to page 25 regarding voter approved measure.</p>	Change Guidelines	<p>It is essential to ensure the financial capability of the recipient to ensure we are funding a project of no-regret. A preliminary financial plan is acceptable at the application stage provided that at the time of signing of the Funding Agreement, the funding is firm. The Guidelines are now revised to specify which components of the Financial Plan can be omitted from the Preliminary Financial Plan in Section IV.I.1.c. of the Guidelines. If the proposed project is economically justified, ranked, and funded on its own without relying on being part of an Area Plan, then the Department may waive this requirement.</p> <p>Related to comments 17, 20, 34, 35.</p>

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27	California Central Valley Flood Control Association, SAFCA, SJAFCFA, SBFCA, TRLIA, WSAFCA	Financial Plan to Support Area Plan- Pages 34 and 35 The financial plan need not be prepared or reviewed by a CPA or CGFM.	No Change to the Guidelines	It shall remain that a CPA or CGFM must prepare the Financial Plan.
28	California Central Valley Flood Control Association, SAFCA, SJAFCFA, SBFCA, TRLIA, WSAFCA	Ranking – Pages 37-41 The revised Guidelines include proposed criteria for numerical ranking not present in the original Guidelines. These numerical rankings are overly restrictive and do not allow for the State to effectively evaluate each project to select those that should be funding. The Guidelines already effectively provided weighing for major factors, and the decision as to how to weigh those factors should be left to each application evaluation.	No Change to the Guidelines	Numerical rankings are provided to prevent subjectivity. There is no minimum number of points required in order to get funded, so the rankings will not disqualify any project from being approved. The ranking process does not need to be executed if the cost of the projects is less than the amount of funding available.
29	California Central Valley Flood Control Association, SAFCA, SJAFCFA, SBFCA, TRLIA, WSAFCA	Supplemental Benefits that Will Result in Higher State Cost-Shares - page 46 Rather than requiring a specific investment threshold of supplemental benefits be achieved (i.e. to achieve a 5% increased cost share, a project must invest at least 5% of the total project cost in recreation, open space, or habitat), a sliding scale should be provided that offers 0%-20% additional cost share depending on the level of investment made as a percentage of the total project costs. Suggested changes to the language is provided below: Features of the Project <i>necessary</i> for flood protection will receive the baseline 50 percent plus the increases for Supplemental Benefits, up to a maximum total of 70 percent. For a multi-objective project, the features necessary for flood protection would be the features associated with the separable flood damage reduction costs	Change Guidelines	The Department has changed the Guidelines to permit local agencies to count expenditures toward the habitat, open space, and recreation objectives toward a new “combination” objective. But, expenditures that are counted toward this objective must still meet the same investment thresholds as other objectives. The investment thresholds as established are consistent with AB 1147 regulations, will reduce uncertainty in funding levels, and will make grant administration easier. <i>See</i> new language in Section IV.I.3.a of the Guidelines.

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		<i>and</i> the joint costs. The recommended percentage increases shall be calculated (a) based on the estimated percentage of costs that will be contributed to any combination of open space, habitat, or recreation, not to cumulatively exceed 20 percent of the Project’s final approved total project cost by the State. At final project close out, an accounting will be performed to determine that actual investments made in any combination of open space, habitat, and recreation; and the State will true-up the cost share percentage based on the actual approved costs as determined by the State; (b £) 20 percent for a significant contribution to objectives related to providing flood protection for Impoverished Areas; (c ¢) 5 40 to 20 percent for a significant contribution to State		
30	California Central Valley Flood Control Association, SAFCA, SJAFCA, SBFCA, TRLIA, WSAFCA	Supplemental Benefits that Will Result in Higher State Cost-Shares- page 46 The Guidelines should clarify the requirement (on page 46) which reads: “A Project provides a significant contribution to the State Facilities Objective when it increases the Level of Protection for State Water Supply Facilities or State Transportation Facilities by at least ten percent.” In particular, the requirement of a “ten percent” increase is ambiguous and suggests that this only refers to the level of protection (i.e., from 20 year level of protection to 22 year level of protection) when there is value in acknowledging that reducing by 50% the number of miles of levees that might fail and impact a facility is of equal (and maybe greater) value.	Change Guidelines	The Department has added some language which is intended to clarify the requirement. See Section IV.I.3.c.ii of the Guidelines.
31	California Central Valley Flood Control Association,	State Facilities Objective – Page 49 The State has defined a State Facilities Objective supplemental benefit that will allow local agencies to obtain a higher State cost share. To achieve an additional	Change Guidelines	The Department has changed the Guidelines to provide greater flexibility with regard how the thresholds for qualification for the State Facilities Objective can be met. <i>See</i> new language in Section IV.I.3.c.ii of the Guidelines.

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	SAFCA, SJAFCA, SBFCA, TRLIA, WSAFCA	<p>10% State cost share, a basin must protect either two State water facilities or two State Highways. The State should consider providing a 5% cost share increase for projects that protect at least one State Highway or one State Water Facility. Suggested language is provided below: > State Facilities Objective. The Local Agency will be entitled to the following increases:</p> <ul style="list-style-type: none"> • Five percent for a Project that makes a significant contribution to the objective by benefiting either one State Transportation facility or one State Water Supply Facility; • Ten percent for a Project that makes a significant contribution to the objective by benefiting any combination of either two State Transportation Facilities and/or or two State Water Supply Facilities; • Fifteen percent for a Project that makes a significant contribution to the objective by benefiting any combination of either three State Transportation Facilities and/or three State Water Supply Facilities; or • Twenty percent for a Project that makes a significant contribution to the objective by benefiting any combination of either two State Transportation Facilities and two State Water Supply Facilities; or four State Transportation Facilities and/or four State Water Supply Facilities. 		
32	California Central Valley Flood Control Association, SAFCA, SJAFCA, SBFCA, TRLIA,	<p>State Facilities Objective – Page 49 The State should consider allowing any combination of State Transportation Facility and/or State Water Supply Facilities to qualify a local agency to meet the threshold for an increased State cost share rather than requiring two State water facilities or two State Highways.</p>	Change Guidelines	<p>The Department has changed the Guidelines to provide greater flexibility with regard how the thresholds for qualification for the State Facilities Objective can be met. <i>See</i> new language in Section IV.I.3.c.ii of the Guidelines.</p>

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	WSAFCA			
33	California Central Valley Flood Control Association, SAFCA, SJAFCFA, SBFCA, TRLIA, WSAFCA	State Facilities Objective – Page 49 Consideration should be given to a greater cost share for projects that provide benefit to regional facilities rather than limiting it to State-owned facilities. For example, freight and/or passenger rail lines, airports, postal and distribution hubs, agricultural storage and processing facilities, and/or other regional facilities that would result in significant economic losses in the event of a flood.	No Change to the Guidelines	No regional facilities will be added for cost share purposes. The types of facilities included is intended to be consistent with the types of facilities for which additional cost-sharing is allowed in Cal. Water Code § 12585.7(d)(5), <i>i.e.</i> State transportation and water supply facilities. Related to 15, 17, 20, 34, 35.
34	California Central Valley Flood Control Association, SAFCA, SJAFCFA, SBFCA, TRLIA, WSAFCA	State Facilities Objective – Page 49 Consideration should be given to allowing additional cost share for other Federal, State, County, and Local government facilities. Demonstration of the value of the facilities could be documented by a mutually agreed upon appraisal report.	Change to the Guidelines	The Department has changed the definition of the term “State Transportation Facility” to include rail lines and ship channels if there are stationary State-owned facilities associated with the rail line or ship channel in the Benefitted Area. No other types of government facilities will be added. The types of facilities included are intended to be consistent with the types of facilities for which additional state cost-sharing has been allowed in Cal. Water Code § 12585.7(d)(5), <i>i.e.</i> State transportation and water supply facilities. Related to 15, 17, 20, 33, 35.
35	California Central Valley Flood Control Association, SAFCA, SJAFCFA, SBFCA, TRLIA, WSAFCA	State Facilities Objective – Page 49 Consideration should be given to allowing additional cost share for projects that benefit emergency operations and special needs facilities such as hospitals, prisons, jails, nursing care, and/or fire/police operations facilities. Demonstration of the value of the facilities could be documented by a mutually agreed upon appraisal report.	No Change to the Guidelines	Only protection of state transportation and water supply facilities will entitle an applicant to an increased cost-share. The types of facilities included are intended to be consistent with the types of facilities for which additional state cost-sharing has been allowed in Cal. Water Code § 12585.7(d)(5) , <i>i.e.</i> State transportation and water supply facilities. Related to 15, 17, 20, 33, 34.
36	California Central Valley Flood Control	State Facilities Objective – Page 49 Consideration should be given to offering 100% cost share for rural areas that can provide transitory storage to	No Change to the	This would be a premature action for EIP, but will be considered as part of the Central Valley Flood Protection Plan.

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	Association, SAFCA, SJAFCFA, SBFCA, TRLIA, WSAFCA	produce regional flood control benefits or for rural areas that agree to establish agricultural conservation easements over their properties to limit future development in the floodplain.	Guidelines	
37	California Central Valley Flood Control Association, SAFCA, SJAFCFA, SBFCA, TRLIA, WSAFCA	Set-Back Levees– Page 49 Consideration should be given to increasing the cost share for setback levees in Urban Areas, even if it can be shown to be the low cost alternative. The State should consider developing a financial incentive that will allow for a setback levee to be cost shared at a minimum of 80%.	Change Guidelines	While the Department is generally retaining its approach to determining the State’s cost share for set-back levees, the Department has modified the Guidelines to provide: (1) there will be a minimum State cost-share of 70% for construction of the setback levee; and (2) for the State to cost share in the setback levee above the cost of repair-in-place or improve-in place, the setback levee must provide regional benefits in flood risk reduction or significant environmental benefits in the judgment of the State. <i>See</i> new language added to Section IV.I.3.c.ii of the Guidelines.
38	California Central Valley Flood Control Association, SAFCA, SJAFCFA, SBFCA, TRLIA, WSAFCA	Impoverished Area Objective – Page 48 Consideration should be given to providing a formula that defines an Impoverished Area based on comparison of the Poverty Rate within the benefit area to the Poverty Rate of a larger geographic area, such as the State as a whole. One proposed methodology would be to define an Impoverished Area as an area with a Poverty Rate that is more than 150% (or 1.5 times) the poverty rate of the State of California. The benefits of type of this definition include; a) the data is easily available for use by local jurisdictions, b) to the extent the poverty rate changes in California over time, the formula moves with these changing levels (as opposed to the median income calculation), and c) it removes some of the technical issues associated with the calculation.	Change Guidelines	The Department has adopted a new “Disadvantaged Area” objective based on median household income which is consistent with its new cost-sharing formula guidelines. The Department notes that its use of median household income is consistent with newly enacted amendments to Cal. Water Code § 12585.7(d)(4). <i>See</i> Section IV.I.3.c.ii of the Guidelines.
39	California	Impoverished Area Objective – Page 48 Consideration should be given to applying a sliding scale	Change	The Department has adopted a new “Disadvantaged Area” objective which is consistent with its new cost-

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	Central Valley Flood Control Association, SAFCA, SJAFCFA, SBFCFA, TRLIA, WSAFCA	for additional cost sharing to those communities that have a higher poverty rate than others within the State. This might help factor in a community's ability to pay a higher local share than another.	Guidelines	sharing formula guidelines. <i>See</i> Section IV.I.3.c.ii of the Guidelines.
40	California Central Valley Flood Control Association, SAFCA, SJAFCFA, SBFCFA, TRLIA, WSAFCA	<p>Setback Levee Cost Share – Page 49-50</p> <p>Some consideration should be given to setting a minimum setback levee cost share in Urban Areas. There are a number of benefits from reduced O&M to the reduction in habitat removal that should be taken into consideration when the State and a local agency move forward with a setback levee in an Urban Area. In addition, the State may want to consider creating a greater incentive to setback levees in Urban areas to provide improved riparian areas and environmental restoration, and possibly to create much needed habitat mitigation banks that may be necessary if the State is required to comply with the USACE vegetation policy in areas where setting back levees is impractical.</p> <p>Revised language is provided below.</p> <p>(iii) Cost-Sharing for Projects or Project Components that are Setback Levees</p> <p>Determine the State Cost-Share. The State will pay the State's cost-share for the hypothetical repair-in-place or improve-in-place project plus 95 percent of the incremental additional Eligible Project Costs incurred as a result of constructing the Setback Levee instead of the hypothetical repair-in-place or improve-in-place project. The State will pay a blended cost-share rate for the entire Project. The blended rate will be determined by combining the</p>	Change Guidelines	While the Department is generally retaining its approach to determining the State's cost share for set-back levees, the Department has now modified the Guidelines to provide: (1) there will be a minimum State cost-share of 70% for construction of the setback levee; and (2) for the State to cost share in the setback levee above the cost of repair-in-place or improve-in place, the setback levee must provide regional benefits in flood risk reduction or significant environmental benefits in the judgment of the State. <i>See</i> new language added to Section IV.I.3.c.ii of the Guidelines.

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		Applicant's cost-share rate for the overall Project with the cost-share rate for all extra work incurred by building the Setback Levee. Applicants will be responsible for paying the balance. At a minimum, the State will provide an 80% cost share for setback levee construction in an Urban Area and will increase that cost share based on appropriate factors.		
41	California Central Valley Flood Control Association, SAFCA, SJAFCA, SBFCA, TRLIA, WSAFCA	Changes to Overall Work Plan After Funding Agreement is Signed – Page 55-56 The Guidelines propose a new sentence on page 56 which reads as follows: "If a change to the cost sharing formula causes the overall state share of the Project cost to increase or decrease by more than 15%, then the parties must amend the Funding Agreement." How does this requirement work for a contract that moves from a 50% State cost shared design project to a 70% State cost shared improvement project? We suggest that this be clarified and explained.	No Change to the Guidelines	If the amount of State funding changes by more than 15%, then the Funding Agreement must be amended. If it already covered both design and construction at the appropriate cost share percentages and project costs have not changed, then there would be no need to amend the Funding Agreement.
42	California Central Valley Flood Control Association, SAFCA, SJAFCA, SBFCA, TRLIA, WSAFCA	Independent Review – Page 57 If DWR pursues the concept of applying new independent review requirements to existing agreements which are amended or where separate agreements are executed for work in the same area, then the majority of the EIP agreements executed in 2008 would be affected. If DWR does this then the Applicants should also be entitled to use changes in the proposed Guidelines that benefit the Applicants, such as some of the environmental and permitting costs that were deemed ineligible under the 2008 EIP guidelines.	No Change to the Guidelines	The Guidelines were not meant to amend the previous Funding Agreements. The intent was to apply the Guidelines prospectively. Where there is a need to amend a Funding Agreement, we would agree to amend it according to B-3 provisions with the agreement, and it may include all or certain provisions of the new Guidelines.
43	California Central Valley Flood Control Association,	Independent Review – Page 57 The requirement on page 58 that current EIP funding recipients get approval for panels under the guidelines is an unconstitutional impairment of an existing contract	No Change to the Guidelines	The requirement that current funding recipients get approval for panels is not new. The prior version of the Guidelines specified that "The Department must approve the reviewers or, at the Department's discretion, it may

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	SAFCA, SJAFCFA, SBFCA, TRLIA, WSAFCA	which is prohibited by the United States Constitution.		choose the reviewers.”
44	California Central Valley Flood Control Association, SAFCA, SJAFCFA, SBFCA, TRLIA, WSAFCA	Independent Review – Page 57 Consideration should be given in the design level agreements to cost sharing early project planning efforts such as hydrologic, hydraulic, geologic, and geotechnical investigations of eligible levees. Many local agencies do not have the capability to complete these activities and this may provide a means to expedite future projects.	For Information Only	Any early preliminary work leading to alternative analyses will not be funded unless the work will eventually be considered part of the project cost. Fees associated with planning activity necessary for CEQA/NEPA approval may be eligible design costs. Any preliminary activities may be eligible costs as well.
45	California Central Valley Flood Control Association, SAFCA, SJAFCFA, SBFCA, TRLIA, WSAFCA	Independent Review – Page 57 The Commenters question the appropriateness of DWR inserting itself so squarely into the independent review process. While independent review is an essential part of any well designed project, it appears that DWR is using the independent review process as a manner to control key design decisions, but the State also seeks to be “hands-off” on design decisions, as a way to limit future possible State liability. These two goals seem inconsistent and the State’s paternal tendencies in this area should be limited. We recommend the following changes to the Guidelines: Approach 1: The Department selects the panel of independent reviewers, administers the Independent Review, and pays the cost of the Independent Review. The Department issues the charge to the panel of independent reviewers, and in consultation with the Local Agency, ensures that the charge is fulfilled. The Department may pay the cost by crediting or reimbursing the Local Agency under the	Change Guidelines	In response to this comment the Department has modified language to Section VII of the Guidelines.

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		Funding Agreement or by contracting directly with the reviewer(s) and/or the reviewer(s)' employer(s), or by a combination of the two. Throughout the process, the Department must consult in good faith with the Local Agency. At the discretion of the Department, the local agency can provide more detailed instruction to be included with the Charge to the independent technical review panel to ensure that project specific technical issues are addressed.		
46	California Central Valley Flood Control Association, SAFCA, SJAFCFA, SBFCA, TRLIA, WSAFCA	Independent Review – Page 57 Approach 1: The Department selects the panel of independent reviewers, administers the Independent Review, and pays 100% of the cost associated with of the Independent Review.	Change Guidelines	In response to this comment the Department has added language to Section VII of the Guidelines.
47	California Central Valley Flood Control Association, SAFCA, SJAFCFA, SBFCA, TRLIA, WSAFCA	(Pg. 59, Last paragraph) The Department retains the sole discretion to require the Local Agency to implement the recommendations of the Independent Review panel. If the Department requires changes that affect the final construction project , such changes will be cost-shared according to the cost-sharing rules established in the Funding Agreement.	Change Guidelines	In response to this comment the Department has added language to Section VII of the Guidelines.
48	California Central Valley Flood Control Association, SAFCA, SJAFCFA, SBFCA, TRLIA,	(Pg. 59, Last paragraph) add sentence The Department retains the sole discretion to require the Local Agency to implement the recommendations of the Independent Review panel. If the Department requires changes, such changes will be cost-shared according to the cost-sharing rules established in the Funding Agreement. If the Department requires additional engineering	No Change to the Guidelines	Supplemental investigations necessary to complete the design should be part of the project cost and cost shared accordingly.

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	WSAFCA	investigations based on recommendations by the Independent Review panel that are not necessary to verify the integrity of the design, the Department will fund 100% of the additional investigations. Such changes may not require an immediate amendment to the Funding Agreement; however, changes costing more than 15% of the maximum state cost-share will require an amendment to the Funding Agreement before they can be funded.		
49	California Central Valley Flood Control Association, SAFCA, SJAFCA, SBFCA, TRLIA, WSAFCA	<p>Cash Flow Issues – Page 79-80</p> <p>The State should advance funding for two quarters without requiring an applicant to provide true-up invoices to release additional funds. The need for this modification is related to the time required for local agencies to process invoices (4-5 months), the State’s desire to have information accounted for on an accrual basis, and the time required for the State to verify invoices and process payments. A “delayed true-up” would greatly improve the State’s ability to support local agencies in the implementation of much needed flood risk reduction projects.</p> <p>Below is some revised language for the State’s consideration (page 79-80).</p> <p>Eligible Project Costs may be covered by advanced payments. Advanced payments are made on a quarterly basis. Such payments are made on the basis of estimated budgets included in Quarterly Work Plans. They are trued-up on the basis of a statement of actual Eligible Project Costs. The State may advance up to two quarterly work plan payments before receiving true-up invoices that are required prior to releasing further State funding.</p> <p>1. Quarterly Advance</p> <p>As soon as possible prior to commencement of the work to</p>	No Change to the Guidelines	Advanced payments already provide for sufficient cash flow for projects.

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		<p>be performed, from the effective date of this Funding Agreement through the end of the calendar quarter, and forty-five days prior to each calendar quarter thereafter, the Funding Recipient shall submit to the State a Quarterly Work Plan for each calendar quarter. The State shall pay in advance on a quarterly basis for Eligible Project Costs (excluding Real Estate Capital Outlay Costs) its cost-share of the work covered in the Quarterly Work Plans submitted. Along with the Quarterly Work Plan, the Funding Recipient will be required to provide statements of incurred Eligible Project Costs. The State may provide funding for up to two quarterly work plan payments in advance of the funding receipt proving true-up invoices to demonstrate that funding is being invested in eligible project costs. If the State determines that advances from previous quarters in that quarter exceed actual costs in previous quarters that same quarter, such amounts may be applied against advances in succeeding quarters. The State's total amount of all advance payments shall not exceed 75 percent of the total estimated cost in the State's share of Eligible Project Costs payable under the Funding Agreement.</p>		
50	California Central Valley Flood Control Association, SAFCA, SJAFCA, SBFCA, TRLIA, WSAFCA	<p>Withholding and Retention - Page 80 The State should consider modifying the retention process to allow for partial release of retention as the project meets certain milestones. Given that the State field inspectors have provided some verbal assurances that the project was constructed sufficiently, the State could release this retention so that a local agency can send a final payment to the contractor and avoid interest penalties for late payments. Suggested language is provided below: 2. Withholding</p>	Change Guidelines	<p>In cases where State is holding significant retention dollars on a project, DWR may consider reducing the retention below 10% when significant closeout requirements have been met and State has sufficient retention to continue to be in secure position. Items to consider when establishing available balance to be released to fund recipient would be pending real estate payments, excess real estate, excess contract dollars, interest or lease proceed due to the State. In response to this comment the Department has added language to Appendix B, Section III.B.2 of the Guidelines.</p>

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		<p>From each disbursement of funds for Eligible Project Costs, with the exception of funds disbursed for real estate payments and quarterly advances, the State will withhold ten percent (10%) of the State share until the Project Element for which the payment is made is completed, or if the work on a particular Project Element is further divided into Project Features, until the work on a Project Feature is completed. Unless good cause exists otherwise, the State will release portions of the State retention so long as the funding recipient is making progress toward project close out. For a construction funding agreement, 50% of the State retention may be released 30 days after the Notice of Completion is recorded. An additional 40% of the State retention may be released after the State deems that adequate information in the following submittals have been provided to the State: (1) a final Statement of Costs has been submitted for Eligible Project Costs for the Project Element or Feature; (2) as-built drawings satisfactory to the State have been submitted to the State; and (3) for a Project Element, a certification of a registered Civil Engineer that the Project has been built in compliance with the plans that are approved by the State. The final 10% State retention will not be released until the State approves all submittals and the State deems that the work the Project Elements or Features has been completed to the State's satisfaction. The State may also consider reduction and release of portions of the 10% State retention on a case by case basis given the amount of construction that has been completed and the estimated work that remains to be completed for a project element or feature.</p>		
51	California	Water Supply Facilities of the State Water Project –	No Change	The list of “Water Supply Facilities” is provided solely

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	Central Valley Flood Control Association, SAFCA, SJAFCFA, SBFCA, TRLIA, WSAFCA	Page 69-72 The list of water supply facilities located in Appendix A-2 ignores the role of the various channels and levees of the Delta in conveying water to Southern California. Indeed, due to the constant water pressure on Delta levees, failure of a Delta levee would result in an impact to the State Water Project (see, for example, the effects on the State Water Project from the Jones Tract Levee failure). For these reasons, the channels and levees of the Delta should be listed as a facility of the State Water Project affecting cost share.	to the Guidelines	for purposes of determining eligibility for increased cost shares for State Facilities. It would be inconsistent with Proposition 1E to increase cost shares for projects that affect Delta levees. Proposition 1E specifies that bond funds may be used to reduce the risk of levee failure in the Delta, but limits funding to: “(A) Local assistance under the delta levee maintenance subventions program under Part 9 (commencing with Section 12980) of Division 6 of the Water Code (B) Special flood protection projects under Chapter 2 (commencing with Section 12310) of Part 4.8 of Division 6 of the Water Code” Pub. Res. Code § 5096.821(c).

Agency /Affiliation:	Senior Water Resources Technical Advisor, HDR	Address: 2365 Iron Point Road, Suite 300 Folsom, CA	By: Email	Date: 4/26/2010
Sent By: Leslie F. Harder		E-mail: Les.Harder@hdrinc.com		

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1	HDR	The Draft Guidelines appear to indicate that is DWR’s intent to employ cost-sharing formulas for the program that would ensure that most, if not all, of the basins and areas to be protected from flooding would need to have their flood protection completed by the federal government as part of a federal floods control project, seemingly to bring in federal participation to thereby reduce State funding for each project. The State Supplemental Cost Share Cap in the Draft Guidelines	Change Guidelines	In response to this comment the Department has added language to Section IV.I.3.(c)(v) of the Guidelines.

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		<p>states that the State is only willing to fund the first 70 percent of any particular Area Plan at a higher State cost-share then transitioning to a 50:50 cost share. (page 46 of Draft Guidelines.)</p> <p>This guideline is contrary to the intent of Proposition 1E, EIP and AB1147. Proposition 1E stated that the State was to maximize federal funds only <i>“to the extent that this does not prohibit timely implementation of this article”</i> [Section 5096.806 of the Public Resources Code, (b), (1)].</p> <p>The State Supplemental Cost Share Cap will force the local agencies to seek financial help from the federal government, and the process for federal flood control projects often requires a decade or two to complete. The EIP program was created, in part, to go ahead of the federal government to complete projects of urgency and was never supposed to be used to force federal participation which would lead to delay, the completion of flood protection for the urban and urbanizing areas of the Central Valley. AB 1147, which the guidelines are in part based off of, allows the State cost share of the non-federal share of federal flood control project to start at 50 percent and to go higher with no cap.</p> <p>My recommendation is that it would be far better flood management policy to eliminate the State Supplemental Cost Share Cap to allow for the actual completion of the critically needed flood protection in individual basins. It would also help reduce potential State liability. If this cap remains, it may be regarded as part of an incomplete plan of State flood protection.</p>		
2	HDR	The Draft Guidelines imply that a project for a particular Area of basin might be funded one year, but that follow-on projects necessary to complete the protection for the area or basin, depending on how the rankings for	Change Guidelines	The Guidelines have been modified to add a new group under the ranking criteria in Section IV.I.2 of the Guidelines to give continuation projects an additional 1-5 points. The Economics section also provides for analysis

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		subsequent projects ended up, might not be funded in the following years. This approach would also appear to lead to a strong probability that individual basins would not receive funding to complete their flood protection, and that several hundred million dollars would be spent without actually reaching 200-year level of flood protection. It would seem that once the State has established a strong interest in providing flood protection for a particular area, it should follow through with additional funding for subsequent projects to complete the area's protection. I recommend that the rankings, or overall approach, be revised to facilitate funding and completion of follow-on projects to complete the flood protection of individual basins.		of remaining costs and benefits for use in the ranking.
3	HDR	It appears that the costs of repair work are not to be considered to count as part of the \$200 million Area Project Spending Cap (see Section II.F. of the Draft Guidelines). I believe that this is an appropriate decision, particularly for the costs of repair work for facilities listed in Water Code Section 8361, which the State considers its responsibility to operate and maintain, and plans to fund at 100 percent. In some basins, the repair costs associated with these facilities could total a substantial amount of the total Area Project costs. If the Supplemental Cost Sharing Cap remains in the EIP Guidelines, it is recommended that the costs of repair work, particularly those associated with facilities listed in Section 8361, not be included in this cap as well.	No Change to the Guidelines	As stated in the Guidelines, repair is not included in the cap, but should be included in the supplemental cap.
4	HDR	Section IV.I.3.a of the Draft Guidelines states that the costs associated with a repair project that involves a facility listed in Water Code Section 8361 will not require a local cost-share. Does DWR contemplate ever leading	For Information Only	DWR may lead repairs for such facilities, but not in the near term.

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		the repairs for such facilities which have been designated to be the responsibility of DWR to operate and maintain, or does DWR expect that these repairs will always be undertaken by local communities as part of the effort to provide flood protection for their areas?		
5	HDR	Has DWR established a priority list of repair projects that involve a facility listed in Water Code Section 8361?	For Information Only	Does not apply to these Guidelines. There is no established priority list.